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|--|---------------|----------------------|---------------------|------------------|
| APPLICATION NO.  | FILING DATE   | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/810,132   | 03/26/2004    | Sigmund Frigstad     | 135270 (553-1044)   | 8833             |
| 45436  | 7590          | 02/14/2008           | EXAMINER            |                  |
| DEAN D. SMALL<br>THE SMALL PATENT LAW GROUP LLP<br>611 OLIVE STREET, SUITE 1611<br>ST. LOUIS, MO 63101 |               |                      | CWERN, JONATHAN     |                  |
| ART UNIT   | PAPER NUMBER  |                      | 3737                |                  |
| MAIL DATE  | DELIVERY MODE |                      |                     |                  |
| 02/14/2008   | PAPER         |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |
|------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/810,132 | <b>Applicant(s)</b><br>FRIGSTAD ET AL. |
|                              | <b>Examiner</b><br>Jonathan G. Cwern | <b>Art Unit</b><br>3737                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 2/8/08.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4,7-15,17,18 and 21-27 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4,7-15,17,18 and 21-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

##### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/31/08 has been entered.

##### ***Claim Objections***

Claims 3, 4, 15, 23, and 24 are objected to because of the following informalities: "the myocardium" lacks antecedent basis. Appropriate correction is required.

##### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7-14, 17-18, 21-23, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemelson et al. (US 5878746).

Lemelson et al. show, diagnostic equipment to acquire and analyze new patient data (column 2, lines 6-61); a database of past patient data sets (standard image stored

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in fact database, column 7, lines 1-30); a network for interconnecting said diagnostic equipment and a database (the diagnostic equipment and the database are inherently connected, this connection can be called a "network"; also this interaction occurs in "real-time", as real-time can be any time, and interconnected facilities can be the database and diagnostic equipment itself); a controller for accessing the database based on the new patient data (column 2, lines 55-60) and providing automated instructions, wherein the diagnostic equipment compares new and past patient data to determine whether additional information is needed (column 3, line 62-column 4, line 8) and highlights abnormalities in an a new image (feature extractor can extract tumors (abnormalities) from the image, by extracting the feature, the feature is thus "highlighted"; examiner would further like to point out the definition of "highlight" which is "to attract attention to or emphasize something important", this is accomplished by extracting the tumor feature, column 6, lines 27-58). Also, the diagnostic equipment acquires ultrasound images (column 2, line 12); can identify the size of the heart (column 8, lines 50-52); comparing new and past data (column 7, lines 1-28); and identifying matches between new and past data (column 6, lines 45-50).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 15, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson et al. (US 5878746) in view of Brady et al. (US 7200612).

Lemelson et al. show, diagnostic equipment to acquire and analyze new patient data (column 2, lines 6-61); a database of past patient data sets (standard image stored in fact database, column 7, lines 1-30); a network for interconnecting said diagnostic equipment and a database (the diagnostic equipment and the database are inherently connected, this connection can be called a "network"; also this interaction occurs in "real-time", as real-time can be any time, and interconnected facilities can be the database and diagnostic equipment itself); a controller for accessing the database based on the new patient data (column 2, lines 55-60) and providing automated instructions, wherein the diagnostic equipment compares new and past patient data to determine whether additional information is needed (column 3, line 62-column 4, line 8) and highlights abnormalities in an a new image (feature extractor can extract tumors (abnormalities) from the image, by extracting the feature, the feature is thus "highlighted"; examiner would further like to point out the definition of "highlight" which is "to attract attention to or emphasize something important", this is accomplished by extracting the tumor feature, column 6, lines 27-58). Also, the diagnostic equipment acquires ultrasound images (column 2, line 12); can identify the size of the heart (column 8, lines 50-52); comparing new and past data (column 7, lines 1-28); and identifying matches between new and past data (column 6, lines 45-50).

Brady et al. teach accessing the database based on wall velocity values (column 4, lines 1-10).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have accessed the database based on wall velocity values as taught by Brady et al., in the system of Lemelson et al. Wall velocity values are typically used to analyze the heart, such as to derive the position of the heart, and are clinically significant.

***Response to Arguments***

Applicant's arguments with respect to claims 1-4, 7-15, 17, 18, and 21-27 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Cwern whose telephone number is (571)270-1560. The examiner can normally be reached on Monday through Friday 9:30AM - 6:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. G. C./  
Examiner, Art Unit 3737

/Ruth S. Smith/  
Primary Examiner, Art Unit 3737